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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

In re BENJAMIN R., A Person Coming Under
The Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

BENJAMIN R.,

Defendant and Appellant.

F037997

(Super. Ct. No. 98807-1)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Fresno County. Ralph Nunez, Judge.

David R. Mugridge, under appointment by the Court of Appeal, for Defendant and Appellant.

Bill Lockyer, Attorney General, Robert A. Anderson, Chief Assistant Attorney General, Jo Graves and Wanda Hill Rouzan, Deputy Attorneys General, for Plaintiff and Respondent.

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*Before Vartabedian, Acting P.J., Harris, J., and Buckley, J.

The Fresno County Juvenile Court placed 15 year old Benjamin R. in the California Youth Authority (CYA) for a maximum confinement period of 16 years for molesting two younger boys. On appeal, Benjamin contends the juvenile court abused its discretion in placing him in CYA instead of a less restrictive alternative. We will affirm.

FACTUAL AND PROCEDURAL BACKGROUND

On November 6, 2000, Jennifer R. learned that a family friend, Benjamin, had sexually molested her 6 and 7 year old sons. Ms. R.'s sister contacted the police, who interviewed the boys and arranged hospital examinations. The younger boy tested positive for traces of sexual contact.

Benjamin was taken into custody and interviewed on video tape. He admitted he inappropriately touched and orally copulated both boys approximately 10 times over the preceding year, but denied sodomizing either of them. Benjamin also admitted he threatened that a violent movie character, "Chucky," would come after the boys if they told their parents. While in custody, Benjamin wrote to Ms. R. apologizing and expressing remorse for his actions.

At trial, Benjamin denied having touched either boy sexually. He said he previously admitted the allegations only because he thought that was what the judge wanted him to say.

The juvenile court disbelieved Benjamin's defense and found he committed two counts of each of the following offenses: lewd acts upon a child (Pen Code¹ § 288, subd. (a)), oral copulation of a person under age 18 (§ 288, subd. (b)(1)), and dissuading a witness from reporting a crime (§ 136.1, subd. (b)(1)).

At a March 2001 dispositional hearing, the juvenile court initially described the probation officer's recommendation to send Benjamin to CYA as "overkill," "a little harsh," and "troubling." Nevertheless, at a subsequent April 2001 dispositional hearing,

¹ All further statutory references are to the Penal Code unless otherwise indicated.

the juvenile court reviewed a psychological examination and additional information on the CYA treatment program, and committed Benjamin to CYA for a maximum term of confinement of 16 years.

DISCUSSION

Benjamin contends the juvenile court abused its discretion by placing him at CYA without adequately inquiring into the suitability of less restrictive placements. In support of his contention, Benjamin specifically points to his lack of a criminal record as well as the juvenile court's improper emphasis on the seriousness of the offenses and his denial of wrongdoing.

A juvenile court's commitment decision may be reversed on appeal only upon a showing the court abused its discretion. (*In re Todd W.* (1979) 96 Cal.App.3d 408, 416.) “We must indulge all reasonable inferences to support the decision of the juvenile court and will not disturb its findings when there is substantial evidence to support them.” (*In re Lorenza M.* (1989) 212 Cal.App.3d 49, 53.)

In determining whether the juvenile court abused its discretion, a commitment disposition must conform to the general purpose of the juvenile court law. (Welf. & Inst. Code, § 202; *In re Todd W.*, *supra*, 96 Cal.App.3d at p. 417.) The juvenile court may impose punishment, but the disposition must evidence probable benefit to the minor and that less restrictive alternatives would be ineffective or inappropriate. (Welf. & Inst. Code, § 202, subd. (e); *In re Teofilio A.* (1989) 210 Cal.App.3d 571, 576.) While the juvenile court law contemplates a progressively restrictive and punitive series of dispositions, there is no absolute rule that the court may not impose a particular commitment until less restrictive placements have actually been attempted. (*Id.* at p. 577.)

Applying these principles, we find substantial evidence supports the juvenile court's disposition and that the court therefore acted within its discretion by placing Benjamin at CYA.

The probation officer's report explained that two local programs, the Elkhorn Correctional Facility Boot Camp and the Delta Program, screened Benjamin for placement, however, both facilities refused him placement due to the number and nature of offenses. The report also explained a second probation officer and a probation services manager screened Benjamin for placement, and both concluded he was at risk of reoffending due to his continued denial of committing offenses. The probation officer further contacted evaluation staff at CYA, who stated its facility had "excellent treatment for sexual offenders" and that Benjamin "would be an excellent candidate for their program."

Despite the recommendation, the juvenile court expressed its concern that a commitment to the CYA seemed excessively harsh given Benjamin's lack of a criminal history. The court inquired into the appropriateness of local programs, and the prosecution responded with the possibility of a group home. However, the prosecutor strongly recommended against a group home believing treatment would likely be ineffective under Benjamin's circumstances, especially given that local treatment programs generally require an admission of wrongdoing to be effective. The juvenile court then ordered a psychological evaluation before making its disposition. By not blindly following the recommendation, the juvenile court demonstrated that, despite Benjamin's belief to the contrary, the court did not apply a "mechanized approach based solely on the seriousness of the offense" (*In re Michael R.* (1977) 73 Cal.App.3d 327, 340.)

The juvenile court later reviewed Benjamin's psychological evaluation. While the evaluation did not recommend one commitment disposition over another, it advised that Benjamin receive: a mandated sex offender program, individual psychotherapy, psycho educational group discussions, structure and supervision at all times to minimize risk of reoffense, psychiatric evaluation for possible medication, family therapy, and eventually

family reunification. The prosecution summarized the report as concluding Benjamin needed “intensive treatment,” which she believed would only be available at CYA.

After hearing argument from both sides, the juvenile court concluded:

“Well, I am satisfied from the probation report and the psychological evaluation that this minor needs a lot of help. There are two ways to proceed. One is to keep him here locally and hopefully we can get him to the right program with all the right assistance and hopefully he would turn out all right. The other option is to get him to CYA. I’m persuaded at this time that the CYA would be the better option. From everything I know, it’s an excellent program. It’s targeted specifically for individuals like this minor, so I’m going to follow the recommendation.”

In summary, the record demonstrates the juvenile court considered Benjamin’s request for a less restrictive placement, but found the request inappropriate under Benjamin’s particular situation. (*In re Teofilio A.*, *supra*, 210 Cal.App.3d at p. 577.) Finding substantial evidence to support the juvenile court’s decision to place Benjamin at CYA, we find no abuse of discretion.

DISPOSITION

The judgment is affirmed.